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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/772,955

02/05/2004

Raymond Hopp

H593-003-PAT

5298

7590

06/02/2006

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EXAMINER

HORTON, YVONNE MICHELE

ART UNIT

PAPER NUMBER

3635

DATE MAILED: 06/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/772,955	Applicant(s) HOPP, RAYMOND	
	Examiner Yvonne M. Horton	Art Unit 3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 March 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10, 12-14, 16, 17 is/are rejected.
- 7) ☒ Claim(s) 11, 15 and 18-20 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

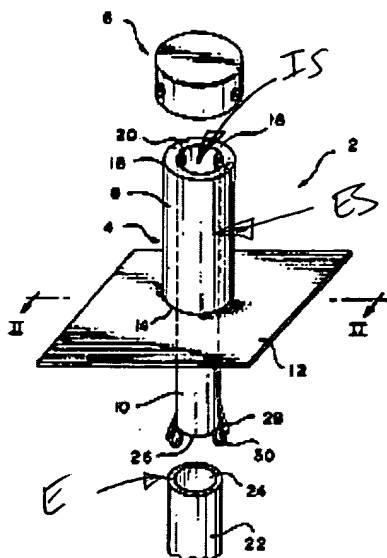
Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-10 and 12-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #5,778,611 to MICHEL. MICHEL discloses a building and a side flue (22) having an end (E) and an interior surface (24), a flue guard (2) having body (4) also having an interior surface (IS), an exterior surface (ES), a first end (26), a second end (16) defining a channel, wherein the external surface (ES) is in circumferential contact of the interior surface (24) of the flue (22). The guard (2) also includes fins (28,30) positioned inside of the flue (22) and at least one stop (18). MICHEL discloses the use a building flue except for the flue does not extend specifically from the side of the building. Although the flue of MICHEL does not extend from te side of the building, it would have been obvious to one having ordinary skill in the art at the time the invention was made to arrange/rearrange or position an element of the invention as being within the general skill of a worker in the art. In reference to claims 3-6, the flue guard (2) is selectively joined to the interior surface (24) of the flue (22) in complete or at least partial circumferential contact through stops (18). Regarding claim 7 and 8, the fins (28,30) are joined to the body of the flue (22) at the first end (26). In reference to claim 9, the flue guard (2) is obviously inserted sufficiently to avoid frozen condensation. Regarding claims 10,12 and 13, the guard (2) includes stop (18) positioned at a second end (16) of the flue guard (2) to engage the flue (22).



Claims 14,16 and 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #5,778,611 to MICHEL. MICHEL discloses the method of maintaining a flue (22) including the steps of inserting a flue guard (2) into a flue (22) to position fins (28,30) thereof on a first end (26) of the flue guard (2); positioning a stop (18) joined at the second end (26) of the flue guard (2); removing the flue guard when clogged. MICHEL discloses the basic claimed method except for explicitly detailing that the flue is positioned on the side of the building and except for explicitly detailing that the guard is removed for washing and reinserting the guard. Regarding the flue not being positioned on the side of the building, it would have been obvious to one having ordinary skill in the art at the time the invention was made to arrange/rearrange or position an element of the invention as being within the general skill of a worker in the art. With reference to the flue being washed prior to reinsertion, it too would have been obvious to one having ordinary skill in the art at the time the invention was made that

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the flue guard (2) once removed due to being clogged would be within the general skill of a worker in the art to clean and reinsert the guard. Regarding claim 16, the positioning step includes positioning an external surface (ES) of the guard (2) adjacent an internal surface (24) of the flue (22) and includes elevating the guard (2) with respect to the flue (22). In reference to claim 17, MICHEL further includes a step of orienting the channel of the guard (2) coaxially with the flue (22).

Allowable Subject Matter

Claims 11,15,18,19 and 20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yvonne M. Horton whose telephone number is (571) 272-6845. The examiner can normally be reached on 6:30 am - 3:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D. Friedman can be reached on (571) 272-6842. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Yvonne M. Horton
Art Unit 3635
05/30/06